Docket #0053 Date Filed: 3/27/2023

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re ALDRICH PUMP LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 20-30608 (JCW) (Jointly Administered)
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS Plaintiff, v. ALDRICH PUMP LLC, MURRAY BOILER LLC, TRANE TECHNOLOGIES COMPANY LLC, and TRANE U.S. INC., Defendants.	Adv. Pro. No. 21-03029
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC, Plaintiff, v. INGERSOLL-RAND GLOBAL HOLDING COMPANY LIMITED, TRANE TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., and MURRAY BOILER HOLDINGS LLC, Defendants.	Adv. Pro. No. 22-03028

[1] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

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OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC, Plaintiff, v. TRANE TECHNOLOGIES PLC, INGERSOLL-RAND GLOBAL HOLDING COMPANY LIMITED, TRANE TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., MURRAY BOILER HOLDINGS LLC, SARA BROWN, RICHARD DAUDELIN, MARC DUFOUR, HEATHER HOWLETT, CHRISTOPHER KUEHN, MICHAEL LAMACH, RAY PITTARD, DAVID REGNERY, AMY ROEDER, ALLAN TANANBAUM, EVAN TURTZ, MANLIO VALDES, and ROBERT ZAFARI Defendants.	Adv. Pro. No. 22-03029

REPLY IN FURTHER SUPPORT OF
PLAINTIFF'S MOTION ON DISCOVERY PROCEDURES

The Official Committee of Asbestos Personal Injury Claimants ("Plaintiff" or the "Committee") respectfully submits this reply (the "Reply")[2] in further support of its *Motion on Discovery Procedures* (Adv. Pro No. 21-03029, ECF No. 119; Adv. Pro. No. 22-03028, ECF No. 50) (the "Motion" or "Mot."), and in response to (i) the *Non-Debtor Defendants' Objection to Plaintiff's Motion on Discovery Procedures* (Adv. Pro No. 21-03029, ECF No. 121; Adv. Pro. No. 22-03028, ECF No. 52) (the "Opposition" or "Opp.") and (ii) the *Debtors' Joinder to Non-Debtor Defendants' Objection to Plaintiff's Motion on Discovery Procedures* (Adv. Pro No. 21-03029, ECF No. 122) (the "Joinder"). For the reasons stated in the Motion and below, the Motion should be granted.

[2] Capitalized terms not otherwise defined herein have the same meaning as in the Motion.

PRELIMINARY STATEMENT

1. The Committee seeks to resolve two disputes in the proposed Discovery Plan: *first*, that the Committee be permitted to take 30 depositions in the two Active Adversary Proceedings; and *second*, that Defendants provide basic information (i.e., titles and dates of employment) for any Trane Organization employee for the limited time period identified in the privilege logs by the Debtors and their affiliated Defendants. The relief sought by the Committee is reasonable and proportional to the needs of these cases. The instant proceedings involve: (i) numerous defendants, (ii) complex financial transactions, (iii) claims sounding in fraud and fraudulent intent, which require a fact-intensive inquiry, (iv) information exclusively within the purview of the Defendants (including the Debtors), and (v) billions of dollars. The relief sought will also minimize the need for future disputes and motion practice as discovery commences and proceeds.

2. Nothing in either the Opposition or the Joinder undermines these conclusions. *First*, as to the number of depositions, Defendants misconstrue the Civil Rules by claiming they proposed a "compromise" of 20 depositions per side for the two separate Active Adversary Proceedings. Opp. 2. But that is no compromise; the Committee is entitled to a minimum of 20 depositions as a matter of right. Defendants also ignore that the complexity and scope of the instant proceedings coupled with the number of parties more than justify adding ten more depositions for both Active Adversary Proceedings combined. *Second*, Defendants overstate the Committee's position with regard to the Players' List. Contrary to Defendants' characterizations, the Committee is simply requesting the roles and dates of each Trane Organization employee for the limited time period referenced on the privilege log, which information should be readily available to Defendants, and which is necessary for the Committee to analyze the validity of Defendants' privilege assertions.

3. In short, the relief sought is necessary to ensure that discovery will proceed in a streamlined and efficient manner. The Committee's Motion should be granted.

I. Issue One: The Committee should be permitted to take 30 fact witness depositions and seek additional depositions should the need arise.

4. Trying to portray their proposal of 20 total depositions as a "compromise" (Opp. 2), Defendants contend—without any legal basis—that "[t]he collective limit under the Federal Rules" for the two separate Active Adversary Proceedings is "ten depositions." Opp. 6.[3] But given the existence of the two separate Active Adversary Proceedings with distinct causes of action, the Committee is entitled to take no fewer than 20 depositions as a matter of law. Fed. R. Civ. P. 30(a). Offering the bare minimum that the Civil Rules provide for is not a "compromise."

5. The Committee seeks leave to take an additional ten depositions (in practical terms, an extra five depositions in the SubCon Proceeding, and an extra five depositions in the Fraudulent Transfer Proceeding). Although the Committee has identified 45 potential fact deponents across both Adversary Proceedings, which includes nine corporate defendants,[4] the Committee requests to set the number of fact depositions at only 30 in the Proposed Discovery Plan. Unlike Defendants' proposal, this *is* a compromise, and one that the Committee believes will serve the needs of these cases while also striking an appropriate balance with respect to efficiency and economy. Further, in making this request for a compromise that has been rejected by the Debtors and Defendants, the Committee has gone beyond "simply listing the names of individuals with potential discoverable information" (Opp. 9), as Defendants contend, because it will not be able to depose all of the individuals it has listed as likely having discoverable information on its initial disclosures.

[3] Defendants do not cite any legal authority in support of that contention; nor can they. Nothing in the Civil Rules suggests that Plaintiff is somehow limited to ten depositions across both proceedings. In fact, even when cases are consolidated (which is not the case here), discovery is not so limited. *See, e.g.,* Mot. 9 (citing *Nicolosi v. Bell Sports, Inc.*, No. 18CV1452SJCLP, 2018 WL 10561915, at *1 (E.D.N.Y. Oct. 15, 2018) ("[C]onsolidation does not merge the suits into a single cause. . . . The Court has not found any case authority suggesting that plaintiff's requests for discovery should be limited[.]") (internal quotation marks omitted).

[4] As explained in the Motion, Plaintiff identified a combined total of 36 individual fact witnesses. Mot. 8. In addition, there are nine corporate defendants in the Active Adversary Proceedings, and Plaintiff may seek to take depositions pursuant to Civil Rule 30(b)(6) of some or all of those entities. Together, the 36 individuals identified in Plaintiff's initial disclosures and the nine corporate defendants total 45 fact depositions.

6. The Committee's request is especially reasonable given the number of parties involved in the proceedings. There are nine corporate defendants in the two Active Adversary Proceedings and the Committee intends to depose them under Civil Rule 30(b)(6), as well as other related entities that are part of the Trane Organization. *See* Notes to Fed. R. Civ. P. 30 ("A deposition under Rule 30(b)(6) should, for purposes of this limit, be treated as a single deposition[.]"). Assuming the Committee wishes to take nine 30(b)(6) depositions, it is left with only 21 individual fact witnesses that it would be able to depose. That number is eminently reasonable for two significant Active Adversary Proceedings.

7. The complexity of the factual and legal issues that dominate these proceedings—which neither Defendants nor Debtors dispute—also supports the Committee's request for an additional ten depositions. The allegations of the proceedings are based on a series of novel and complicated financial transactions, involving numerous parties that occurred prior to and during the Corporate Restructuring (including ***two*** divisional mergers and various agreements among Defendants and their affiliates). In addition, the gravamen of the claims sound in fraud and involve intent, an issue which is universally recognized as fact-intensive. Those facts are exclusively within the possession, custody, and control of the Debtors and their affiliated Defendants. What's more, billions of dollars are at stake. These facts alone warrant exceeding the deposition limit by a mere five depositions in each Active Adversary Proceeding.

8. Contrary to Defendants' assertions (Opp. 7-8), courts routinely allow parties to exceed the deposition limit when the case involves multiple parties or complex facts or claims. *See, e.g., Crawford v. Newport News Indus. Corp.*, No. 4:14-CV-130, 2016 WL 11673839, at *2 (E.D. Va. Jan. 21, 2016) (granting additional depositions based on the "complexity" of the case "and the number of plaintiffs"); *United States v. Daily Gazette Co.*, No. CIVA 2:07-0329, 2008 WL 4610311, at *2 (S.D.W. Va. Oct. 15, 2008) (granting additional depositions in case involving "complicated factual issues that . . . require substantial discovery"); *see also Erdmann v. Preferred*

Research, Inc. of Ga., 852 F.2d 788, 792 (4th Cir. 1988) ("The scope and conduct of discovery . . . are within the sound discretion of the district court.").[5] Indeed, as explained in *Premier Construction & Remodel, Inc. v. Mesa Underwriters Specialty Insurance Co.*, No. EDCV182582JGBKKX, 2019 WL 8138041, at *5 (C.D. Cal. Nov. 14, 2019) (cited in Opp. 10 n.9), a party need not first exhaust the default deposition limit before requesting additional depositions if the case is "highly complex or involves multiple parties."[6]

9. These Active Adversary Proceedings stand in stark contrast to the "run-of-the-mill" cases cited in the Opposition. *See, e.g.*, *Authentec, Inc. v. Atrua Techs., Inc.*, No. C 08-1423 PJH, 2008 WL 5120767, at *2 (N.D. Cal. Dec. 4, 2008) (stating it "is not a complex" action) (cited in Opp. 8). Indeed, none of the cases that Defendants cite (Opp. 8-9) come close to the complex factual allegations in the two Active Adversary Proceedings.[7] For this reason, Defendants' attempts to emphasize the overlap between the two Active Adversary Proceedings are of no

[5] *See also United States v. RES Holdings*, Civ. A. No. 11-739, 2012 WL 4369658, at *2 (E.D. La. Sept. 24, 2012) ("[T]he complex facts involved in this case warrant an extension of the typical ten-deposition limit."); *L.W. v. Lackawanna Cty.*, No. 3:14-CV-1610, 2015 WL 2384229, at *1 (M.D. Pa. May 19, 2015) (finding plaintiffs satisfied particularized showing in complex case); *Laryngeal Mask Co. Ltd. v. Ambu A/S*, No. 307CV01988DMSNLS, 2009 WL 10672436, at *4 (S.D. Cal. July 17, 2009) (granting additional depositions because "[t]his is a complex case, involving a number of corporate plaintiffs and defendants as well as complicated factual and legal issues"); *Corey Airport Servs., Inc. v. City of Atlanta*, No. 1:04-CV-3243-CAP, 2007 WL 9717220, at *2 (N.D. Ga. Feb. 20, 2007) (allowing more than 15 depositions because of "highly complex" underlying facts and numerous defendants); *Genentech, Inc. v. Insmed Incorporation*, 442 F. Supp. 2d 838, 848 (N.D. Cal. 2006) (allowing additional depositions as part of discovery on willfulness, as "[p]laintiffs had no control over how many firms provided opinions to Defendants and how many of Defendants' employees were privy to the opinions"); *Thykkuttathil v. Keese*, 294 F.R.D. 601, 603 (W.D. Wash. 2013) (granting additional depositions in complex matter with multiple parties on each side and where plaintiffs disclosed large number of potential witnesses).

[6] *See also Corey Airport Servs*., 2007 WL 9717220, at *2 (there was no requirement "a party is required to exhaust the allowed or consented-to depositions before seeking leave to take additional depositions" and permitting additional depositions where "facts are highly complex and the number of named defendants alone exceeds the Rule 30(a)(2)(A) default maximum"); *Laryngeal Mask*, 2009 WL 10672436, at *2 ("The Court can perceive no reason, however, for establishing an exhaustion requirement").

[7] *Cf. Marseet v. Rochester Inst. of Tech.*, No. 20-CV-7096FPG, 2023 WL 533288 (W.D.N.Y. Jan. 27, 2023) (discrimination and retaliation claims alleged by student-employee); *James v. Lee*, No. 16-cv-01592-AJB-JLB, 2019 WL 3220156 (S.D. Cal. July 17, 2019) (single-plaintiff claims of prisoner abuse); *Small v. City of Wilmington*, No. 7:17-CV-00071-FL, 2018 WL 6068057 (E.D.N.C. Nov. 19, 2018) (damages claim arising from wrongful conviction); *Wei-Ping Zeng v. Marshall Univ.*, No. 3:17-cv-03008, 2019 WL 937328 (S.D.W. Va. Feb. 26, 2019) (discrimination claim concerning denial of tenure); *Talismanic Props., LLC v. Tipp City*, 309 F. Supp. 3d 488 (S.D. Ohio 2017) (dispute over a development of land); *United States v. Goertz*, No. A–09–CA–179 LY, 2010 WL 2900309 (W.D. Tex. July 20, 2010) (tax refund dispute).

moment. The complexity and scope of even one of these two Active Adversary Proceedings justifies a request to seek ten more depositions.

10. Moreover, as the facts in these cases mirror those in *DBMP*, and indeed, the Discovery Plan that the parties negotiated here—the terms of which Defendants largely agreed to—also mirrors that in *DBMP*, the Committee's request for 30 depositions, the same number of depositions to which the parties in *DBMP* agreed and this Court approved, is especially reasonable, given that these two Active Adversary Proceedings involve twice as many defendants, transactions, and debtors. Put simply, and compared to *DBMP*, the Committee's request for an additional ten depositions is proportional to the needs of these two proceedings.

11. Despite Defendants' claim, *see* Opp. 2, the Committee is not seeking "overlapping discovery" with what it obtained in the Preliminary Injunction Proceeding. First, the discovery in the ***Preliminary*** Injunction Proceeding was limited to what was necessary to litigate the narrow issues that were relevant to that proceeding. *See* Mot. 9-10. It was further limited by counsel's instructions to their witnesses not to answer based on privilege, which occurred more than 100 times. Further, if and when Defendants produce additional documents in the Active Adversary Proceedings, the Committee may need an opportunity to question witnesses about documents that the Committee did not have at the time of the depositions in the Preliminary Injunction Proceeding.[8]

12. Second, Defendants' argument that the Committee intends to seek duplicative discovery is inapposite, as the Committee has made clear to Defendants that it does not wish to duplicate discovery, and the Parties in fact negotiated a provision in the Discovery Plan memorializing their agreement to enter into a deposition protocol prior to the start of depositions

[8] Defendants also point to a Court order from *DBMP* addressing the availability of investigative depositions that might have been sought during a separate preliminary injunction proceeding. Opp. 6. n.4. That has no bearing on the number of depositions that Plaintiff should be able to take in two complex, multi-billion-dollar lawsuits.

that would aim to minimize duplicative discovery. *See* Mot. Ex. A, Para. 6 ("Prior to the commencement of any depositions, the Parties will agree to meet and confer in good faith to discuss the parameters of a deposition protocol."). Defendants' claim regarding the potential for "overlapping discovery" is thus already mooted by the negotiated language between the Parties.

13. Since the Committee has demonstrated a need for the requested depositions, there is no reason for this Court to conclude that it "must engage in arbitrary delay before entertaining a motion for depositions in excess of the presumptive 10." *Aerojet Rocketydyne, Inc. v. Global Aerospace, Inc.*, No. 2:17-cv-01515-KJM-AC, 2018 WL 5993585, at *2 (E.D. Cal. Nov. 6, 2018). As one court has explained: "[a]ddressing the issue proactively allows a party to make informed choices about its litigation strategy and which witnesses it will ultimately depose." *Lawson v. Spirit AeroSystems, Inc.*, No. 18-1100-EFM-ADM, 2020 WL 1285359, at *3 (D. Kan. Mar. 18, 2020) (citing *Del Campo v. Am. Corrective Counseling Servs., Inc.*, No. C-01-21151JWPVT, 2007 WL 3306496, at *6 (N.D. Cal. Nov. 6, 2007) ("it would be prejudicial to require [parties] to choose the . . . ten depositions to take before they know whether they will be granted more")). Further, proactively authorizing ten additional depositions in the Active Adversary Proceeding avoids the need for future meet-and-confers, and potential Court involvement, for every deposition that the Committee seeks that exceeds the 20 depositions already authorized by the Civil Rules.

14. In a similar vein, Defendants have not put forth any evidence demonstrating that "the burden or expense [of an additional ten depositions] outweighs its likely benefit. Nor is the burden or expense disproportionate to the amount in controversy or the complexity of the claims." *Mintz v. Mark Bartelstein & Assocs., Inc.*, No. CV 12-3055 SVW (SSX), 2012 WL 12886492, at *3 (C.D. Cal. Sept. 14, 2012). As the Committee has repeatedly made clear, Plaintiff is prepared to work with Defendants to schedule depositions, meet and confer with Defendants prior to the commencement of depositions, and efficiently conduct discovery to minimize cost and burden.

II. Issue Two: Defendants should provide sufficient employment information about the roles of Trane Organization employees for the time period in the privilege log.

15. The Committee is not seeking the "entire employment history" for each Trane Organization employee. Opp. 4. The Committee's request is limited to information concerning the time period referenced in the privilege logs. The Committee is also not seeking "all titles and positions held within the Trane [O]rganization." *Id.* The Committee is only asking for the titles and positions of ***Defendants' officers, directors, and employees*** of the nine corporate Defendants—not each and every affiliate within the Trane Organization. It is Defendants' burden to prove the existence of privilege, and providing basic information about their own employees whose communications *they* are claiming privilege over is well within the Defendants' knowledge and is not unduly burdensome. *See, e.g.*, *Progressive Se. Ins. Co. v. Arbormax Tree Serv., LLC*, No. 5:16-CV-662-BR, 2018 WL 4431320, at *4 (E.D.N.C. Sept. 17, 2018) (citing *In re Miller*, 584 S.E. 2d 772, 782 (N.C. 2003)).

16. Although Defendants offer to provide "the *current* title of each Trane [Organization] employee and position(s) held by such individual with any Trane-affiliated entity as of the date the [list] is prepared" (Opp. 4 (emphasis added)), that information is insufficient for assessing Defendants' privilege logs. By way of example, communications in the privilege logs submitted in the Preliminary Injunction Proceeding span from 2016 to 2020. Suffice it to say, an employee's current title is likely irrelevant in assessing claims of privilege for documents created earlier in time. The information sought by the Committee is particularly critical given the Corporate Restructuring that Defendants planned and engaged in involved two divisional mergers and the formation of new entities, and several of their managers and officers simultaneously held multiple roles at different entities.[9]

[9] *See, e.g., Findings of Fact and Conclusions of Law Regarding Order: (I) Declaring That the Automatic Stay Applies in Certain Actions Against Non-Debtors, (II) Preliminarily Enjoining Such Actions, and (III) Granting in Part Denying in Part the Motion to Compel*, Adv. Pro. No. 20-03041, ECF. 308, at ¶ 91 ("Ms. Roeder is also chief financial

17. Defendants also contend that the requested information is "premature" until the Committee "receive[s] and review[s] Defendants' privilege logs." Opp. 14. However, the Committee has already received and reviewed those privilege logs that Defendants submitted in the Preliminary Injunction Proceeding and concluded that the privilege logs are deficient. The Players' Lists that Defendants produced in the Preliminary Injunction Proceeding are similarly deficient because they omitted critical employment information about key witnesses, preventing the Committee from being able to understand the basis for Defendants' privilege claims, including claims invoking the common interest doctrine. Accordingly, the Committee already knows that if it does not obtain the information it requests here, it may not be able to meaningfully assess Defendants' privilege assertions. For example, in the corporate context, it is black-letter law that "privilege may be waived where a confidential communication is disclosed to employees who did not need access to the communication." Mot. 12 (quoting *Hepburn v. Workplace Benefits, LLC*, No. 5:13-CV-00441-BO, 2014 WL 12623294, at *5 (E.D.N.C. Apr. 18, 2014)). The fact that the Defendants' privilege logs in the Preliminary Injunction Proceeding identify over 250 Trane Organization employees (Opp. 14) suggests that privilege may have been waived because the documents were widely disseminated to employees "who did not need access." *Hepburn*, 2014 WL 12623294, at *5.

18. In any event, Defendants bear the burden to establish the elements of privilege and to provide sufficient descriptions in the privilege log that "enable other parties to assess the claim" of privilege. *Progressive Se. Ins. Co.*, 2018 WL 4431320, at *6, *8 (quoting Fed. R. Civ. P.

officer of the Debtors' operating subsidiaries, 200 Park and ClimateLabs, and serves as a member of their boards. Additionally, Ms. Roeder maintains her position as finance director for information technologies and legal at New TTC."); ¶ 92 ("The Debtors are staffed by three seconded employees (Allan Tananbaum, Robert Sands, and Phyllis Morey) pursuant to a secondment agreement among New TTC, Aldrich, and Murray."); ¶ 93 ("In addition to his role as the Debtors' CLO, Mr. Tananbaum holds the position of deputy general counsel for product litigation at New TTC. In addition to being an in-house attorney seconded to the Debtors, Mr. Sands holds the position of associate general counsel for product litigation at New TTC.").

26(b)(5)(A)(ii)). Given the Trane Organization's corporate structure and the various entities involved both prior to and during the Corporate Restructuring, the Committee's request to provide, for the Defendants' employees listed on their privilege log, the names of only the Defendant entities at which those employees were employed or held titles during the relevant period is necessary to evaluate and, if required, "challenge the assertion of privilege with specificity." *Mt. Hawley Ins. Co. v. Adell Plastics, Inc.*, No. CV 17-00252-JKB, 2017 WL 3621184, at *4 (D. Md. Aug. 22, 2017).

19. Further, Defendants vaguely claim that providing the requested information "would be a time-consuming and burdensome effort." Opp. 4. Putting aside the implausibility of Defendants' assertion that hundreds of employees within the Trane Organization were on a need-to-know basis, the requested information is basic and limited in nature. And any burden on Defendants is more than outweighed by the Committee's need to meaningfully assess Defendants' assertions of privilege. As set forth in the Motion, courts routinely require parties to provide information about the scope of employment for individuals identified in their own privilege logs.

20. In short, the Committee requests that Defendants provide basic information about each Trane Organization employee referenced in their privilege logs. Specifically, the Committee asks that Defendants provide (i) the dates of employment and/or affiliation with Defendants and (ii) the relationship (i.e., job titles or roles) to Defendants for the time period in the privilege logs.

CONCLUSION

The Committee respectfully requests that this Court (a) enter Plaintiff's Proposed Discovery Plan, substantially in the form attached as **Exhibit A** to the Motion and (b) grant such other and further relief as is just and proper.

Dated: March 27, 2023

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